IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8959 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RATILAL AMTHALAL PATEL & 2 - Petitioner(s)

Versus

COLLECTOR & 1 - Respondent(s)

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Appearance :

MR PINAKIN M RAVAL for Petitioner(s) : 1 - 3.
MR HM PRACHCHHAK ASST GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
RULE SERVED for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/12/2005

ORAL JUDGMENT

1. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the proceeding / notice

issued by the Collector, Stamp, Mehsana dated 16.6.2004 calling upon the petitioner to show cause as to why the alleged the deficit stamp duty of Rs.2,24,950/- and penalty of ten times of the alleged deficit stamp duty i.e. Rs.22,49,500/- should not be recovered with regard to the Document No.1236 dated 20.6.1991 presented before the Sub-Registrar, Kadi on 20.6.1991.

2. It appears from the record that the petitioner has taken a loan from G.S.F.C. For an amount of Rs.25,11,000/- on 22.6.1988 and the petitioners mortgaged their factory along with all the machineries. It appears that the petitioner executed second mortgage deed on 20.6.1991 in favour of the State Bank of Saurashtra and the said second mortgage deed came to be presented before the Sub-Registrar, Kadi on 20.6.1991 itself. It is the contention on behalf of the petitioner that the said second mortgage deed came to be accepted by the Sub-Registrar, Kadi without any objection and even the mortgage deed was also returned subsequently. It appears from the record that after period of almost

13 years of the execution of the said document, the Collector, Stamp Duty, Mehsana issued a show cause notice dated 16.6.2004 under Section-39(1)(b) of the Bombay Stamp Act calling upon the petitioner to pay the deficit stamp duty of Rs.2,24,950/- and the petitioner was also called upon to show cause as to why the penalty to the extent of 10 times of the deficit stamp duty should not be imposed. In the said show cause notice, it is also stated that considering the provisions of the Bombay Stamp Act, more particularly, Article-20(1) of the Schedule-I, the petitioner was required to use the stamp duty of Rs.2,40,000/-. It is also stated in the show cause notice by the Collector that the said document is impounded under Section-33 of the Act. Being aggrieved and dissatisfied with the aforesaid notice and initiation of the proceedings after a period of 13 years, the petitioner has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

3. Shri Pinakin Raval, learned advocate appearing on behalf of the petitioner has vehemently submitted

that initiation of the proceedings by the Collector, Stamp, Mehsana under Section-39(1)(b) of the Bombay Stamp Act is after unreasonable period and more particularly, when the petitioner document was returned by the Sub-Registrar after holding that the stamp duty paid by the petitioner is adequate. He has relied upon the judgment of the Hon'ble Supreme Court in case of STATE OF GUJARAT VS. PATEL RAGHAV NATHA AND OTHERS reported (X) GRL 992 and subsequent judgments of this Court in taking the view that whenever the powers are to be exercised by the authority and no time limit is prescribed, the same are to be exercised within a reasonable period. He has also submitted that a period of 13 years cannot be said to be reasonable period, and therefore, it is requested to quash and set aside the aforesaid notice and the aforesaid proceedings initiated under Section-39(1)(b) of the Bombay Stamp Act, 1958.

4. Shri H.M.Prachchhak, learned AGP appearing on behalf of the respondent has opposed the present special civil application and affidavit-in=reply is filed on behalf of the respondent No.2 and relied

upon Para-8 of the affidavit-in-reply. He has submitted that the authorities has tried to explain the delay in initiating the proceedings and therefore, it is requested to dismiss the present special civil application. It is also further submitted that as such, the petition is at pre-mature stage and the same is required to be dismissed.

5. Heard the learned advocates appearing on behalf of the parties.

6. It is not in dispute that document registration No.1236 came to be presented before the Sub-Registrar, Kadi on 20.6.1991 and the same was returned to the petitioner after holding that the stamp duty used by the petitioner is adequate. It is also not in dispute that the Collector, Stamp Duty, Mehsana for the first time issued notice under Section-39(1)(b) of the Bombay Stamp Act, 1958 on 16.6.2004 i.e. after a period of almost 13 years and impounded the document under Section-33 of the Bombay Stamp Act. On going through the affidavit-in-reply, more particularly, para-8 of the reply, it appears

that the respondent has tried to explain the delay by submitting that the authority is required to conduct the quasi judicial proceedings under Section-32-A of the Act and the said proceedings are required to be finalised in the stipulated time limit and therefore, priority is required to be given to the said proceedings and therefore, the cases wherein audit objections have been raised, are not decided and the same are delayed. It is required to be noted that the aforesaid impugned proceedings are initiated on account of audit objection. Nothing has been mentioned in the affidavit-in-reply that as to when audit objection was raised and what was period between the audit objection and initiation of the proceedings. Merely because the authority was required to do some other work, cannot be a ground to initiate the proceedings after a period of 13 years. It is true that so far as proceedings under Section-39(1)(b) of the Act are concerned, as such, there is no time limit fixed by the statute. However, wherever time limit is fixed, as held by the Hon'ble Supreme Court as well as this Court in catena of decisions, the authorities are required to initiate the

proceedings within a reasonable time limit. Obviously, the period of 13 years cannot be considered to be a reasonable period. When the respondent authority has initiated the proceedings after period of 13 years, certainly, it can be said to be exercise of the powers after a period of unreasonable period and on that ground alone, the present special civil application is required to be allowed and the impugned notice dated 16.6.2004 is required to be quashed and set aside.

7. For the reasons stated above, the petition succeeds. The impugned notice dated 16.6.2004 is hereby quashed and set aside.

8. Rule is made absolute to the aforesaid extent. However, there shall be no order as to costs.

Direct Service is permitted.

[M.R.Shah, J.]

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